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SUBJECT: U.S.-EU JHA Ministerial Meeting Holds Productive Sessions
on Law Enforcement, Counterterrorism Issues, and Visa Waiver
Program

REF: A. USEU Brussels 00447

Summary

¶1. (U) Slovenian Interior Minister Dragutin Mate and Justice Minister Lovro Sturm hosted Attorney General Michael Mukasey, Homeland Security Secretary Michael Chertoff, and European Commission Vice-President and Commissioner for Justice, Freedom and Security Franco Frattini on March 12-13 for the U.S.-EU Justice and Home Affairs (JHA) Ministerial Troika. The Troika made progress on law enforcement, border security, and counterterrorism issues, including the U.S. Visa Waiver Program (VWP), border and document security, radicalization and terrorist recruitment, and protection of privacy. Secretary Chertoff and the Attorney General also gave presentations on border security to EU Interior Ministers attending a Conference on External Border Management.

¶2. (U) Despite concerns the VWP would dominate the Troika after it had become headline news across Europe, VWP discussions were open and positive and did not inhibit progress in other areas. The U.S. and EU issued a joint statement and agreed to hold "twin track" discussions by pursuing with Member States those issues within national authority, and with European Union institutions the areas of community competence. On lost and stolen passports, the United States and EU agreed on the importance of benchmarks for timely reporting as well as the need to take account of how to improve response time for dealing with hits.

¶3. (U) Troika participants, who also included EU Counterterrorism Coordinator Gilles de Kerchove, Europol Director Max-Peter Ratzel, Eurojust President of the College Jose Luis Lopes da Mota, Frontex Director Ilkka Laitinen, French Immigration Minister Brice Hortefeux representing the incoming EU Presidency, and Embassy Ljubljana Charge' d'Affaires Maryruth Coleman, identified several specific items for future cooperation. Both sides committed to work towards completion of common data privacy principles before the U.S.-EU Summit in June. Participants agreed to encourage use of biometric travel documents in third countries, exchange biopreparedness plans, and to continue to press for ratification of the U.S.-EU Mutual Legal Assistance and Extradition treaties (MLATs). The U.S. side agreed to look into improving sharing information with Europol, and will review legislative options for enhancing international cooperation on pathogen research.

¶4. (U) Looking ahead to the Summit, the Slovenian EU Presidency is eagerly anticipating a successful U.S.-EU Summit this June. Officials are focused on getting concrete deliverables to shine a positive light upon our relationship with Slovenia and the EU in

what will be the President's last Summit with the EU. We expect that in the JHA area, Slovenia will continue to press forward to achieve completion of the common data privacy principles exercise and to manage the VWP issue fairly. Unfortunately, given domestic situations in some Member States, it appears unlikely that the MLAT ratifications will be complete in time for the Summit. End Summary.

Visa Waiver Program (VWP)

¶ 15. (U) Secretary Chertoff said the U.S. continues to make significant progress in implementing the expansion of the VWP, the most promising effort in many years and the first since 9/11. President Bush had announced the initiative in Estonia in 2006 and remained personally committed to it, Secretary Chertoff said. He added that the VWP remains politically sensitive with the U.S. Congress; however, with members of both parties expressing reservations about expanding visa free travel privileges due to concerns about illegal immigration as well as security, the need arose to expand the VWP in tandem with greater security cooperation.

¶ 16. (U) Secretary Chertoff highlighted the Memoranda of Understanding (MOUs) the United States had signed with EU Member States and cited the continuing need for bilateral talks on implementation issues. To cite one example, Secretary Chertoff mentioned Lost and Stolen Passport (LASP) reporting. While in the VWP context the United States, like the EU, sees Interpol as the first source of information about EU LASP, EU Member States (MS) need to stand behind the data originating there for hit resolution, said Secretary Chertoff.

¶ 17. (U) Frattini said the overall position of the EU remained that the United States should allow all the MS into VWP as soon as

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possible, citizens of all EU Member States must be treated the same, and the MOU process needed to respect existing EU legislation where applicable. He said there had been misunderstandings about the VWP expansion process but they had "not been intentional," and informal U.S.-EU discussions on the eve of the meetings had brought greater understanding of the U.S. position. He relayed that the March 11 COREPER meeting in Brussels had concluded that the bilateral VWP MOUs are political rather than legally binding documents, and so are within the competence of MS to sign; but that the EU would continue to study the MOUs and eventual implementing agreements for areas of EU competency. Frattini warned that Member States could not make any commitments in areas under Community competency, including anything provided for in the U.S.-EU PNR agreement or access to EU databases. Frattini noted his recent appearance before the European Parliament where the Commission came under heavy fire; Parliament insisted the Commission and Council monitor the VWP process closely.

¶ 18. (U) U.S. and EU Delegates held formal and informal discussions throughout the two day meeting concerning the VWP, meetings that resulted in a joint press statement released at the end of the meeting. The statement sets forth a common goal - "to achieve secure visa-free travel, in full compliance with the applicable laws, between the Member States of the EU and the USA as soon as possible" - and a twin track approach whereby the United States will continue bilateral discussions with EU Member States on VWP MOUs and on implementing arrangements on those matters that fall within national responsibilities, while holding discussions with EU institutions on matters within EU responsibility. Senior U.S. and EU officials agreed to meet in Brussels March 14 to begin those talks (see reftel).

Electronic System for
Travel Authorization (ESTA)
NOTE: formerly known as
Electronic Travel Authorization or ETA)

¶ 19. (U) Frattini again emphasized there was considerable need to clarify misunderstandings. The EU sought transparent consultations on ESTA leading to an EU decision on its "satisfaction" with ESTA,

which would lead to a "political endorsement" at the June U.S.-EU Summit. Secretary Chertoff explained that ESTA is mandated by the 9/11 Implementing Act signed into law by President Bush in August 2007 and so is not a subject for U.S.-EU negotiation. Nevertheless, U.S. officials would be happy to dispel confusion and explain ESTA to EU officials. The ESTA would be operational this summer, Secretary Chertoff went on, although roll out would occur in stages,

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so that all VWP countries would participate in ESTA no later than June 2009.

¶10. (U) Secretary Chertoff explained that DHS will implement ESTA consistently to all VWP countries, including both current and aspirant VWP countries that are EU Member States. Frattini and Secretary Chertoff agreed on the merits of coordination as both the

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United States and the EU develop ESTA systems and as the EU develops a biometric entry system (i.e., akin to US-VISIT).

¶11. (U) Frattini stated at the Troika meeting and the press conference afterwards that the United States would engage in a dialogue, not formal negotiation, with the EU about the ESTA.

Other Visa Policy Issues

¶12. (U) Secretary Chertoff briefly raised three areas for further discussion with the EU:

A) Exchange of information on asylum seekers to stop asylum shopping or attempts to conceal the applicant's identity or known criminal or security risks. Frattini noted the first results of the EU's asylum database Eurodac are highly promising; use of biometric data had discouraged multiple applications in different MS without decreasing the ability to recognize true refugees. Frattini, Minister Hortefeux, and Minister Mate noted concern about illegal immigration into the EU. As a result, some EU MS are looking into requiring transit visas. Both sides agreed this is a problem; EU officials noted increases in illegal immigration by Ukrainians and Chechens.

B) Repatriation. Secretary Chertoff commented that while cooperation with Europe is good, other countries such as China and India are reluctant to take their citizens back. Frattini said these countries are also a problem for the EU. The EU concluded an arrangement with Pakistan, he said, but in general third countries

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want to discuss returns in the context of a political package covering legal migration opportunities too. He cited Morocco, with which the EU is currently negotiating.

C) The Western Balkan region. Secretary Chertoff expressed concern about the EU's Visa Facilitation arrangements with the Western Balkans given the amount of crime, smuggling, and trafficking there. Mate commented that the Balkans were a "grey zone inside the EU" but that they all should look towards EU membership. He noted that the Presidency and Commission had together introduced visa liberalization negotiations with the Balkans that included some preconditions such as passports with biometric data. All Western Balkan countries had readmission agreements with the EU, he said.

Radicalization and Terrorist Recruitment

¶13. (U) AG Mukasey said the United States and the EU must improve our understanding both of the motives of those who become radicalized as well as the process behind it. He welcomed a successful initiative in Iraq led by moderate imams, where "irreconcilable" radicals are separated according to the extent to which the roots of violence have penetrated, allowing for a more targeted approach. Secretary Chertoff urged continued focus on prison populations. EU CT Coordinator De Kerchove said there remains a problem of will and acknowledged the EU does more on repression than prevention. Non-violent Salafism is pushing Muslim populations outside the mainstream of European society, he said. EU

is looking at several areas, including criminalizing incitement to violence on the internet and improving the exchange of information on returning jihadists with Europol and Eurojust. Turning to prevention, De Kerchove said the problem is much harder because part of the policies belong to the EU Member States. He suggested the EU could collect best practices. The proper approach should be one that does not stress the counterterrorism dimension, but focuses on diversity, integration, alliance of civilizations, and intercultural dialogue (Note: 2008 is the European year of intercultural dialogue.

End Note.) Our societies must remain faithful to our core values and human rights, he continued. De Kerchove asked the group to consider how to engage with Islamist parties, especially in autocratic countries where they are often the main opposition parties.

¶14. (U) Frattini, highlighting a disturbing but growing trend of forced marriages, domestic violence, and polygamy in Europe, said there was a critical role for education with respect to the role of women in our societies, and MS should stand against the subjugation of any of its citizens. Regarding a soon-to-be-released film by Dutch Freedom Party leader Geert Wilders reported to be critical of the Koran, Frattini said the EU must be prepared to react strongly if there were a violent response. The EU stood firmly behind freedom of expression and would not tolerate violence against EU Member States' embassies. Reactions in the Muslim world could test EU solidarity but the EU must maintain a united political front. Frattini also called for improved methods of tracking financing and donations coming into the EU from unknown sources, allegedly to build new mosques but being channeled to establish radical cells. Minister Mate echoed his call for documentation and greater financial disclosures from the mosques. Frattini noted that the EU is engaged in visa liberalization talks with all Western Balkan countries except for Bosnia-Herzegovina, because the "authorities there tolerate returning radicals who participated in jihads." He added that the EU is concerned about growing Islamist cells in the region.

¶15. (U) Europol Director Ratzel called for improved cooperation with the U.S. He expressed concern that law enforcement efforts are handicapped because the U.S. currently cannot share with Europol information classified above law enforcement sensitive. Ratzel hopes the U.S. can resolve this situation, either by declassifying information or updating the U.S.-Europol agreement, for example. He noted that with the assistance of Deputy Assistant Attorney General Bruce Swartz, Europol and the U.S. have also launched a project on returning terrorist fighters from Iraq. Ratzel also suggested that Europol could contribute by focusing on financing of terrorism to determine the networks. Mate summed up by saying there should be more cooperation in this area of radicalization and terrorist recruitment.

Reducing risks from chemical, biological, radiological and nuclear (CBRN) attacks

¶16. (U) Frattini called for greater cooperation with the U.S. on safety measures, rapid reaction, and development of Early Warning

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Systems for CBRN attacks. He highlighted the European Centre for Disease Prevention and Control (ECDC), an EU agency based in Stockholm, Sweden, which held an exercise in 2007, and suggested that the U.S. and EU organize a joint exercise on biopreparedness, possibly to be coordinated by ECDC. AG Mukasey explained that the FBI would coordinate any U.S. response to CBRN attacks and undertook to review the idea. Frattini thanked the U.S. for the very valuable comments provided on the Commission's Green Paper on Biopreparedness in 2007. He said the Commission intends to prepare an action plan by spring 2009 covering security of biological substances and training personnel; education and awareness of staff about existing legislation; establishing a network of reference laboratories that could exchange information; monitoring of biological incidents; and medical countermeasures needed for a rapid reaction. Frattini stressed that work with the United States in these areas is key, but post 9/11 legislation imposed restrictions on international cooperation on pathogens research, and he asked if the United States could review this legislation in order to identify ways to improve

cooperation. AG Mukasey said the U.S. could explore legislative options. De Kerchove called for better understanding of threats, impacts, and use of intelligence capabilities; he said EU did not have complete knowledge of EU vaccine stockpiles because Member States were not always willing to divulge this information, but following passage of the Lisbon Treaty access to this information should be facilitated under the solidarity clause. Secretary Chertoff said a biological attack might be more likely, due to the relatively greater difficulty terrorists may have in attempting to access chemical, nuclear, or radiological weapon components. He underscored the complexity of distributing vaccines to a large number of people quickly. Detection capabilities are improving but the problem of distribution systems remains. Joint planning and training is critical, he concluded.

Document Security, Biometrics

¶17. (U) In the area of lost and stolen passports, Mate said the EU is working with Interpol to improve data entry and hit resolution. The Commission is preparing a report to improve functioning of the Interpol database during the Slovenian Presidency. He reported that two-thirds of all the data in the Interpol database, and fifty percent of all the searches, originate from the EU. Frattini agreed with the U.S. suggestion to establish benchmarks for timely reporting, but suggested that instead of pursuing uncoordinated initiatives with Member States, the U.S. and EU should undertake a joint initiative to improve Interpol database functioning and follow up on hits. Chertoff called attention to the problem of lengthy response time on hits, which forces travelers to wait at the port of entry while hits are resolved. AG Mukasey said that the Department of Justice, where the U.S. National Central Bureau for Interpol is located, remains committed to improving this cooperation and would consult with DHS about Frattini's suggestion.

¶18. (U) Mate thanked the AG and Secretary for their participation in the EU Ministerial Conference on External Borders Management that took place March 11-12 and for providing greater clarity on U.S. efforts to strengthen its border. Frattini said the EU's vision of cooperation in this field is expanding, and there is unanimous MS agreement in enhancing border management systems. The goal is to harness technological, human resources, and international cooperation and to develop international standards and interoperability. The EU will implement these initiatives over the next four to five years, Frattini said.

¶19. (U) Frattini suggested the United States and EU work together to promote use of biometric documents through complementary efforts and "twinning projects" in areas of interest, including the Mediterranean, Caucasus, Middle East, and the Balkans. Secretary Chertoff agreed and Minister Mate approved his suggestion to establish an expert level group to explore the idea.

Data Protection and Information Exchange: High Level Contact Group (HLCG)

¶20. (U) Mate expressed satisfaction with the amount of work the HLCG completed so far, with only a few minor items remaining. He explained he presented the HLCG exercise to EU ministers at the February 28 JHA Council; he regretted that the United States and EU were not able to agree on a joint statement, but there had not been sufficient time. The HLCG is still an "informal" discussion, as there is no condition for formal talks (i.e. no official mandate), he said. Mate committed to push forward and complete work during the Slovenian Presidency with a deadline of the June JHA Council. AG Mukasey and Secretary Chertoff also offered support for

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completion of the exercise and urged that experts and senior level HLCG be directed to complete work in time for the June U.S.-EU Summit. They also advocated strongly that we explore how to turn the principles into some kind of result that would allow each other's privacy systems to be recognized as adequate.

EU-US Mutual Legal Assistance
and Extradition Agreements

¶21. (U) Justice Minister Sturm provided an update on the status of Member State ratifications of the agreements. Conclusion of the national processes for ratification of these instruments is a high priority for the Slovenian Presidency. Slovenia urged MS to accelerate ratification at the January informal meeting of EU Justice Ministers, and Commissioner Frattini sent letters to all Member States urging prompt ratifications. Sturm said the EU expects all ratifications to be completed by the end of 2008. AG Mukasey announced the U.S. Senate Foreign Relations Committee would hold a hearing in May on the full package of U.S.-EU agreements and bilateral protocols. At the close of the discussion, the Slovenians took on the responsibility, working with the U.S., to prepare a training conference/seminar for representative EU and U.S. prosecutors on the new investigative cooperation provided for in the agreements.

Western Balkans

¶22. (U) Minister Mate reviewed progress on law enforcement cooperation in the Western Balkans, including the Southeast Europe Cooperation Initiative (SECI) Center, and the draft Southeast European Law Enforcement Center (SELEC) Convention. Regarding the South East Europe Organized Crime Threat Assessment (SEE OCTA), he said following political agreement of all Western Balkan ministers last October, focus has turned to practical implementation of SEE OCTA, which is now an EU project. He noted training would start in April with the help of Europol, Slovenian experts, and SECI Center. Following that training, the countries will start preparing the threat assessments, which will form the basis of future assistance.

¶23. (U) Frattini said the EU is a major donor in the Western Balkans. The Commission is working closely with the U.S. Mission to the EU to better understand U.S. efforts and to promote cooperation. AG Mukasey stated that the U.S. supports efforts in the Balkans through Department of State-financed programs as well as through law enforcement agencies and prosecutors working in the field. On the SECI Center and U.S. concerns over unnecessary data protection requirements, Frattini said the proper approach should consist of two levels, two systems. Coordination with Europol would require a more ambitious standard. Europol Director Ratzel supported this strategy. The AG noted that the U.S. recognizes the differences in the ability of EU and non-EU states to comply with the strict data protection regime, and staunchly urged flexibility. AG Mukasey suggested enlisting cooperation without imposing requirements that would block cooperation. Frattini repeatedly concurred with the AG's comments regarding a flexible approach. The two sides agreed this could help deal with organized crime throughout the region to foster security and stability.

Priorities for the French EU Presidency

¶24. (U) Minister Hortefeux said France's JHA priorities for its upcoming Presidency included an EU-wide pact on migration to address widely disparate immigration and asylum rules among MS. He also said France would focus on trafficking in persons, Frontex, illegal immigration, completing initiatives begun by the Slovenes, and reinforcing the operational role of Eurojust, in particular cooperation with third countries, especially the United States. On Frontex, he noted it should have a dual mission, covering land and sea. He said France looks forward to hosting the next U.S.-EU Informal JHA Senior Level meeting in July in Paris and to participating in the next JHA Ministerial Troika in December 2008 in Washington.

Comment

¶25. (SBU) In the weeks leading up to the Ministerial, the VWP had eclipsed all other issues as the United States held bilateral discussions with several EU member states and signed MOUs with the Czech Republic on February 27 and with Estonia and Latvia on March 12. Extensive press reporting across Europe attempted to portray the U.S. actions in negative terms as seeking to "divide" Europe. The Ministerial meeting succeeded in countering these fears.

Despite the previous concerns EU rancor over VWP would completely dominate the Troika, talks were frank, honest and cooperative, and the delegates were able to defuse the charged atmosphere and cover significant ground.

¶26. (SBU) Concerning the HLCG, Minister Mate admitted it is a victim of the VWP issue and said he was frustrated at the inability to reach agreement on a Ministerial joint statement. Nonetheless, the discussion on this issue was positive, and all sides agreed the HLCG presented a significant deliverable for the June Summit and that best efforts should be made to reach that goal; although Frattini, in his final day in office at the Commission, sounded less enthusiastic than Mate. Slovenian Presidency plans to present the final product at the JHA Council June 5-6.

¶27. (SBU) Throughout the meeting the Government of Slovenia (GOS) kept the tone calm and the agenda moving forward. Representatives of both USDOJ and DHS commented to Embassy officers that GOS logistical support of this high-level event was flawless, which we regard as a good sign as we and the GOS prepare for the U.S.-EU Summit in June.

¶28. (U) DOJ and DHS have cleared this cable.
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